

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

Amendment of the Commission's Rules )

To Permit Flexible Service Offerings )

in the Commercial Mobile Radio Services )

WT Docket No. 96-6

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COMMENTS OF  
WINSTAR COMMUNICATIONS, INC.

Philip L. Verveer  
Michael F. Finn  
**WILLKIE FARR & GALLAGHER**  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20036-3384

Its Attorneys

Timothy R. Graham  
Leo I. George  
Joseph M. Sandri, Jr.  
**WINSTAR COMMUNICATIONS, INC.**  
1146 19th Street, N.W.  
Washington, D.C. 20036

Of Counsel

March 1, 1996

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## **SUMMARY**

THE COMMISSION SHOULD:

- ADOPT FLEXIBLE USE POLICIES
- ALLOW THE MARKET TO DETERMINE THE MOST EFFICIENT USE OF SPECTRUM

A FLEXIBLE USE, MARKET-BASED POLICY WOULD:

- ALLOW LICENSEES TO TAKE ADVANTAGE OF TECHNOLOGICAL ADVANCES AS THEY OCCUR
- ENABLE CONSUMERS TO REAP SWIFTLY THE BENEFITS OF SUCH ADVANCES
- CONSERVE FCC RESOURCES BECAUSE LICENSEES WOULD NOT NEED TO SEEK WAIVERS FROM USE RESTRICTIONS IN ORDER TO OFFER NEW SERVICES

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WinStar Communications, Inc. ("WinStar")<sup>1</sup> enthusiastically supports the concepts and ideas underlying the specific proposals contained in the CMRS Flexibility NPRM.<sup>2</sup> WinStar believes that those concepts and ideas should also be utilized in the FCC's ongoing rule making concerning the 37-40 GHz band.<sup>3</sup>

The CMRS Flexibility NPRM proposes to allow all broadband CMRS licensees to provide fixed wireless local services without restriction and solicits comment on whether provision of all

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<sup>1</sup> WinStar is a licensee in the 37-40 GHz band.

<sup>2</sup> Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, FCC 96-17, Notice of Proposed Rule Making, WT Docket No. 96-6 (released Jan. 25, 1996) ("CMRS Flexibility NPRM").

<sup>3</sup> In the Matter of Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, FCC 95-500, Notice of Proposed Rule Making and Order, ET Docket No. 95-183, RM-8553 (released Dec. 15, 1995) ("37-40 GHz NPRM").

other fixed services should be permitted without limitation.<sup>4</sup>

Comment is also sought on whether the agency should allow market forces to determine the most efficient use of the broadband PCS spectrum.<sup>5</sup>

WinStar, as explained more fully in comments to be filed Monday, March 4, 1996, in the 37-40 GHz proceeding, believes that the FCC should adopt policies which allow licensees to use their spectrum as fully as possible, limited only by the boundaries of the Commission's legal authority. In accordance with that view, the Commission should allow market forces to guide spectrum to its highest and best use. Such "flexible use," market-based policies will lead to gains in efficiency and increases in both competition and consumer welfare.<sup>6</sup> WinStar therefore supports the CMRS Flexibility NPRM's proposals to grant licensees the flexible use of their spectrum.

As aptly recognized in the CMRS Flexibility NPRM, restrictions on the use of spectrum "could hinder carriers from quickly and economically using channel capacity to meet changing

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<sup>4</sup> See CMRS Flexibility NPRM at ¶ 23.

<sup>5</sup> Id. at ¶ 14.

<sup>6</sup> Economists have noted that a market-based, flexible use policy would allow licensees to determine how to best use their spectrum which "they will do [] by searching for the most profitable mix of spectrum uses. This, in turn, will (as a general matter) be the mix that best satisfies consumer demands." See Steven R. Brenner & John R. Woodbury, Charles River Associates, "Antitrust Considerations in the Licensing of the 37 to 40 GHz Band," a study prepared for WinStar that will be submitted with its comments in the 37-40 GHz proceeding (March 4, 1996) at Part III.A.1.

market demand."<sup>7</sup> Flexible use, in contrast, "should allow licensees to adapt quickly to technological innovation and changing consumer demands."<sup>8</sup> In other words, flexible use would enable licensees to market swiftly innovative new services, thereby enabling consumers to receive quickly the benefits of such innovation.<sup>9</sup> In the event that consumer demand changes, flexible use permits licensees to alter their service options in order to meet changing demands. Flexible use also conserves FCC resources because it would "eliminate the need for the Commission to initiate a rule making or grant waivers each time a [licensee] wishes to adjust its operational mode to respond to consumers' changing communications requirements."<sup>10</sup> In sum, flexible use will allow licensees to take advantage of technological advances as they occur and to pass on the benefits of such advances to consumers.

In that regard, WinStar believes that flexible use should be given not only to CMRS licensees, but also to 37-40 GHz licensees such as WinStar. With advances in technology, there may

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<sup>7</sup> CMRS Flexibility NPRM at ¶ 13.

<sup>8</sup> Id. at ¶ 24.

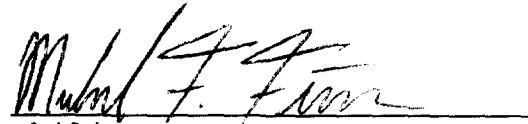
<sup>9</sup> Another benefit that licensees would be able to offer consumers is a "menu" of service options, allowing the consumer to receive both fixed and mobile services from a single licensee. CMRS Flexibility NPRM at ¶ 20. In a competitive market, any cost savings achieved from network integration (using the same facilities to provide a variety of services) would be passed on to end users. See id. (recognizing that licensees may achieve economies of scale from network integration).

<sup>10</sup> CMRS Flexibility NPRM at ¶ 9.

eventually be opportunities for other uses of the 37-40 GHz spectrum, such as point-to-multipoint, mobile, or video. Licensees in the 37-40 GHz band should be given the same ability to make use of technological advances as CMRS providers are given here.

For the foregoing reasons, WinStar respectfully urges the Commission to grant licensees' maximum flexibility in the use of their spectrum in this proceeding as well as in the 37-40 GHz proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael F. Finn", written over a horizontal line.

Philip L. Verveer  
Michael F. Finn  
**WILLKIE FARR & GALLAGHER**  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20036-3384

Attorneys for WinStar  
Communications, Inc.

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Leo I. George  
Joseph M. Sandri, Jr.  
**WINSTAR COMMUNICATIONS, INC.**  
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